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SERVICE DATE - MARCH 4, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-6 (Sub-No. 381X)

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY--  
ABANDONMENT EXEMPTION--IN HENNEPIN AND RAMSEY COUNTIES, MN

Decided: March 1, 1999

The Burlington Northern and Santa Fe Railway Company (BNSF) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon 2.43 miles of rail line between milepost 0.00 near East Minneapolis and milepost 2.43 near Rollins Oil, in Hennepin and Ramsey Counties, MN.<sup>1</sup> Notice of the Exemption was served and published in the Federal Register on November 30, 1998 (63 FR 65865-66). By decision served December 29, 1998, a 180-day public use condition was imposed under 49 U.S.C. 10906 at the request of the Minnesota Department of Transportation (Mn/Dot). The condition required that BNSF keep the right-of-way intact, including bridges, culverts, and similar structures, for a period of 180 days after the December 30, 1998 effective date of the exemption to permit Mn/Dot and any other state or local government agency, or other interested person to negotiate for acquisition of the line for public use. The 180-day period will expire on June 28, 1999.

On January 20, 1999, the Minneapolis Park and Recreation Board (MPRB) late-filed a request for a 180-day public use condition under 49 U.S.C. 10906 and for the issuance of a notice of interim trail use (NITU) under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act).<sup>2</sup>

Under the Trails Act, and the corresponding regulations at 49 CFR 1152.29, in addition to acknowledging that the right-of-way may be reactivated for rail service and providing a map of the right of way, a prospective trail user is required to include a statement of willingness to be

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<sup>1</sup> The December 29, 1998 decision also imposed an environmental condition that required BNSF, prior to engaging in any salvage activities, to consult with the Minnesota Pollution Control Agency to address possible impacts resulting from salvage operations.

<sup>2</sup> The November 30 notice provided that requests for trail use/rail banking had to be filed by December 10, 1998, and that requests for public use conditions had to be filed by December 21, 1998. MPRB's request for a public use condition is moot, because a public use condition has already been imposed in the decision served December 29, 1998. A public use condition is not imposed for the benefit of any one potential user, but rather to provide an opportunity for any interested person to acquire a right-of-way that has been found suitable for public purposes, including trail use.

financially and managerially responsible for the right-of-way. See 49 CFR 1152.29(a)(2) and (a)(3). The Board cannot issue a NITU without the required statement from the prospective trail user and, because interim trail use is strictly voluntary, the Board also cannot issue a NITU without a statement from the railroad indicating whether it is willing to negotiate an agreement.

This decision will not significantly affect the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. The request for a public use condition is moot.
3. The request for a NITU is denied. MPRB may, however, file additional information in conformity with our trail use regulations at 49 CFR 1152.29. Should MPRB file the necessary statement of willingness to assume financial responsibility with the Board, BNSF is directed to inform the Board within 10 days of MPRB's filing with the Board whether it is willing to negotiate with MPRB for possible trail use.
4. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary